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August 12, 1980

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INTERAGENCY
The Honorable Pete Dunn
Chairman, House Ways &
Means Committee
Arizona State Legislature
Phoenix, Arizona

The Honorable Ray Rottas
Chairman, Senate Finance Committee
Arizona State Legislature
Phoenix, Arizona

Re: I80-154 (R80-161)

Dear Representative Dunn and Senator Rottas:

In your letter dated July 10, 1980, you ask

"...whether or not the levy limitations encompass just the general property tax or the general property tax and in lieu payments of the Salt River Project."

In our opinion, the levy limitations cover both the general property tax and voluntary contributions made pursuant to A.R.S. § 45-2202.

In 1980, the legislature revamped the scheme for property taxation in Arizona. The legislation restricted the amount of property taxes which may be levied, and placed budget restrictions on local governments. The principal legislation was Chapter 8, Laws of 1980, (Second Special Session, 1980). Chapters 218 and 221 of the Second Regular Session, amended and revised the legislation produced in the Special Session. These will be referred to as Chapter 8, Chapter 218 and Chapter 221, respectively.

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In Section 89 of Chapter 8,^{1/} the Legislature limited the total levy for tax year 1980 for certain governmental entities in this state to an amount which depends in important part on the total levy for the tax year of 1979. Then, in Chapter 218, Section 10, the Legislature amended Section 89 of Chapter 8, by amending Subsection B to direct that, in computing the amount of the 1979 levy for use in determining the limit on the 1980 levy, the 1979 levy should include voluntary contributions received pursuant to A.R.S.

^{1/}Subsection A of Section 89 states:

A. For the tax year 1980, a county, city, town or community college district shall not levy ad valorem taxes, other than taxes to pay the principal of and the interest or redemption charges on bonded indebtedness and ad valorem taxes or assessments levied by or for assessment districts and limited purpose districts other than community college districts, in excess of primary property taxes levied in the tax year 1979 computed pursuant to subsection B of this section, except that additional levies may be made equal to the percentage by which the total taxable assessed valuation of the political subdivision for 1980 exceeds the total taxable assessed valuation of the political subdivision for 1979, not to exceed seven per cent. For purposes of this subsection, the total taxable assessed valuation of the political subdivision for 1979 shall be computed by applying the assessment ratios prescribed by section 54 of this act for the different classes of property to the total taxable full cash values of property on the 1979 tax rolls.

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§ 45-2202.^{2/} Chapter 221, Section 9, contains language identical to Chapter 218 in this respect. The problem arises because, although the Legislature directed that, for the purpose of computing the 1979 levy, voluntary contributions should be included, it did not amend Subsection A to clarify that the limit in the 1980 levy included 1980 voluntary contributions within its ambit. The question then is whether we should interpret the phrase "ad valorem" taxes as it is used in Subsection A of Section 39, of Chapter 8, as amended by Chapter 218, Section 10, and in Section 9 of Chapter 221, to include voluntary contributions.

We think the failure to clarify that the use of the term "ad valorem taxes" in Subsection A included voluntary contributions pursuant to A.R.S. § 45-2202 was an oversight, as it seems more plausible to assume that, when a limitation is placed on one year's levy in terms of the preceding year's levy, the items included in the levy for both the current and preceding year should be the same unless the Legislature clearly has indicated that they should not be. It is more plausible to make this assumption because we think the Legislature used the size of the levy in the base year as an indication of the basic fiscal need, and desired to limit the succeeding year's levy to the same level with only those exceptions specifically permitted.

Therefore, in 1980 a taxing authority may not levy more in total property taxes, including voluntary contributions

^{2/}The pertinent language states:

* * *

1. For counties
 - (a) Determine the 1979 total property tax levy including voluntary contributions received pursuant to § 45-2202, Arizona Revised Statutes.
[Underlined language added by amendment.]

Similar language was added to the provision for cities and towns.

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paid pursuant to § 45-2202, than was levied for primary purposes in 1979, except as provided in Chapter 218, Section 10 and Chapter 221, Section 9(A).

Sincerely,

A handwritten signature in cursive script, reading "Bob Corbin".

BOB CORBIN
Attorney General

BC/eb